

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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FILE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ludlow, California)

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MM Docket No. 92-148
RM-8022

COMMENTS

KHWY, Inc. ("KHWY"), licensee of KHYZ(FM), Mountain Pass, California, by its attorneys, hereby submits comments in opposition to the proposed amendment of the FM Table of Allotments to allot Channel 261B1 to Ludlow, California. See Notice of Proposed Rule Making, DA 92-887 (Allocations Branch, released July 15, 1992) ("NPRM").

The Channel 261B1 proposal should be rejected because of the lack of an available site. Moreover, the proposed allotment will be subject to interference from adjacent channel station KOLA(FM), San Bernardino, California, as well as cause interference to KOLA. Other channels, including another Class B1 and other Class A's, would not be subject to interference, and consequently are preferred alternatives. KHWY is interested in this proceeding because KHWY would apply for a suitable allotment to Ludlow -- however, Channel 261B1 is defective.

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I. The Proposed Allotment Cannot Be Made Because The
Petitioner Has Not Shown That There Is An Available
Site That Complies With the Commission's Technical
Requirements

It is well established that the Commission will not allot a channel "absent a reasonable assurance that transmitter sites are available which will permit a station to operate in compliance with the Commission's technical requirements."

Creswell, Oregon, 3 FCC Rcd 4608, 4608 [¶ 3] (Policy and Rules Division 1988), reconsideration denied, 4 FCC Rcd 7040 (Policy and Rules Division 1989); accord Pinckneyville, Illinois, 41 RR2d 69, 71 [¶ 9] (Broadcast Bureau 1977). Once a substantial question is raised as to the availability of a site, the burden shifts to the proponent to demonstrate "that the allotment can indeed be made in conformance with the technical rules."

Creswell, 3 FCC Rcd at 4608 [¶ 3]. Absent such a showing, a proposed allotment will be rejected. Id. Moreover, when the site is located on land under the jurisdiction of another federal agency, the Commission must consult with such agency prior to allocation to determine whether the area is available. See Bay Shore, NY, 25 FCC2d 877, 881-82 [¶¶ 12, 15] (1970); accord San Clemente, CA, 50 Fed Reg 8326 (Policy and Rules Division, March 1, 1985) (when non-short-spaced area located on military base, allotment made based upon affirmative showing by petitioner that military would consider construction on property).

Here, the reference coordinates for Channel 261B1 are located on land administered by the United States Department of Interior, Bureau of Land Management ("BLM"). See attached statement from the BLM. 1/ The BLM has emphatically stated that no construction of any kind is permitted in this area, which is designated as a Wilderness Study Area. See id. Environmental concerns, including protection of endangered species, has long restricted development in this area.

Given that the reference site is unavailable -- as is the surrounding area -- the burden of demonstrating that a technically-feasible site is available for the Channel 261B1 allotment shifts to the Petitioner. Consequently, the Petitioner has the burden of making an affirmative showing in its Reply Comments that there is a specific site that is available and that meets the Commission's technical requirements (city-grade coverage, line-of-sight, minimum spacing). 2/ The Petitioner's showing must also include a

1/ There are two sets of relevant coordinates -- those provided by the Petitioner, and those used by the Branch in the NPRM. Both reference sites are on BLM land.

2/ The area in which to place the Channel 261B1 site is restricted not just by Station KOLA to the southwest, but also by Station KHYZ to the northeast. See attached Engineering Statement. The Commission granted KHYZ express authority to increase its service area beyond the standard Class B maximum when it granted a waiver of its rules for an increase in KHYZ's effective radiated power from 2.29 kilowatts to 10 kilowatts.

demonstration of the willingness of the appropriate Federal and/or County agencies to permit construction of a broadcast facility in this environmentally-sensitive area. Unless the Petitioner meets this burden, the proposed allotment must be denied.

II. Channel 261B1 Would Be Subject to Interference from KOLA and Would Cause Interference to KOLA

If the Petitioner cannot meet its burden to establish site availability, then the allotment should be denied on that basis alone. However, an additional factor warrants denial of the proposal -- interference from and to Station KOLA(FM), San Bernardino, California.

KOLA is a grandfathered "superpower" station. Even when a new allotment meets the minimum separation requirements for the class, the Commission will refuse to make the allotment when it will create interference because of a grandfathered "superpower" station. See Vallejo, CA, 40 RR2d 648, 651-52 [¶¶ 7-8] (Broadcast Bureau 1977), affirmed, 44 RR2d 375 (1978); Muncie, Indiana, 32 FCC2d 839, 842-44 [¶¶ 9-13] (1972), reconsideration denied, 38 FCC2d 324 (1972). These Commission cases, which continue in force today, ^{3/} indicate that concern about interference with a "superpower" station will override

^{3/} Research indicates that no subsequent Commission-level case has questioned or overruled these cases.

even the provision of first full-time local transmission service. See, e.g., Vallejo, 44 RR2d at 378 [¶¶ 9-10]. The Commission explained in Vallejo that the interference with a superpower station "would have the same kind of effect as if it were subjected to short-spacing." Id. at 378 [¶ 10].

The Channel 261B1 proposal will receive interference from KOLA and also will cause interference to KOLA's authorized contour. See attached Engineering Statement. Because of this interference, from the outset, the operator of the Ludlow station will be burdened with a sub-standard signal. Here, there are no countervailing public interest benefits, such as first local service, to this defective allotment -- Ludlow already has a Class A allotment (for which a construction permit has been granted). Thus, the Ludlow proposal is even less worthy of consideration in the face of interference by a superpower station than the denied allotments for Vallejo and Muncie.

On the other hand, there are other available channels that would provide city grade coverage to Ludlow, but would not interfere with KOLA -- Channels 243B1, 243A and 277A. See attached Engineering Statement. 4/ Clearly, with other

4/ If pursuant to this counterproposal such other channel is allotted, KHWY hereby states its present intention to apply for such channel, and, if authorized, to build a station promptly.

alternatives that are neither subject to nor cause interference, a deficient channel such as Channel 261B1 should not be allotted to Ludlow.

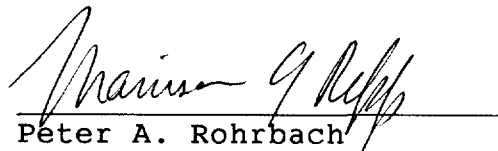
III. Conclusion

The proposal to allot Channel 261B1 to Ludlow, California, must be rejected. The proposed site and surrounding area is unavailable for the construction of radio facilities. Unless the Petitioner can demonstrate the availability of an actual alternative site, Commission precedent requires the denial of the allotment proposal. Furthermore, the proposed station would be subject to and create interference with Station KOLA, while other channels would not. Under these circumstances, the Branch should deny the allotment of Channel 261B1. Alternatively, the Branch should substitute a channel that will not be subject to or cause interference.

Respectfully submitted,

KHWY, INC.

By:


Peter A. Rohrbach
Marissa G. Repp

HOGAN & HARTSON
555 Thirteenth St., NW
Washington, DC 20004-1109
(202) 637-5600

September 4, 1992

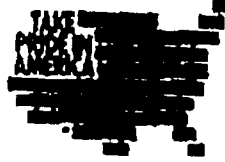
2089R/4595o

ATTACHMENTS



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
NEEDLES RESOURCE AREA OFFICE
101 WEST SPIKE'S ROAD
P.O. BOX 888
NEEDLES, CALIFORNIA 92363-0888
(619) 326-3896



IN REPLY REFER TO:

2860
CA069.25

Howard B. Anderson
President
KHWY Inc.
12381 Wilshire Boulevard, Suite 105
P. O. Box 25606
Los Angeles, CA 90025

Dear Mr. Anderson:

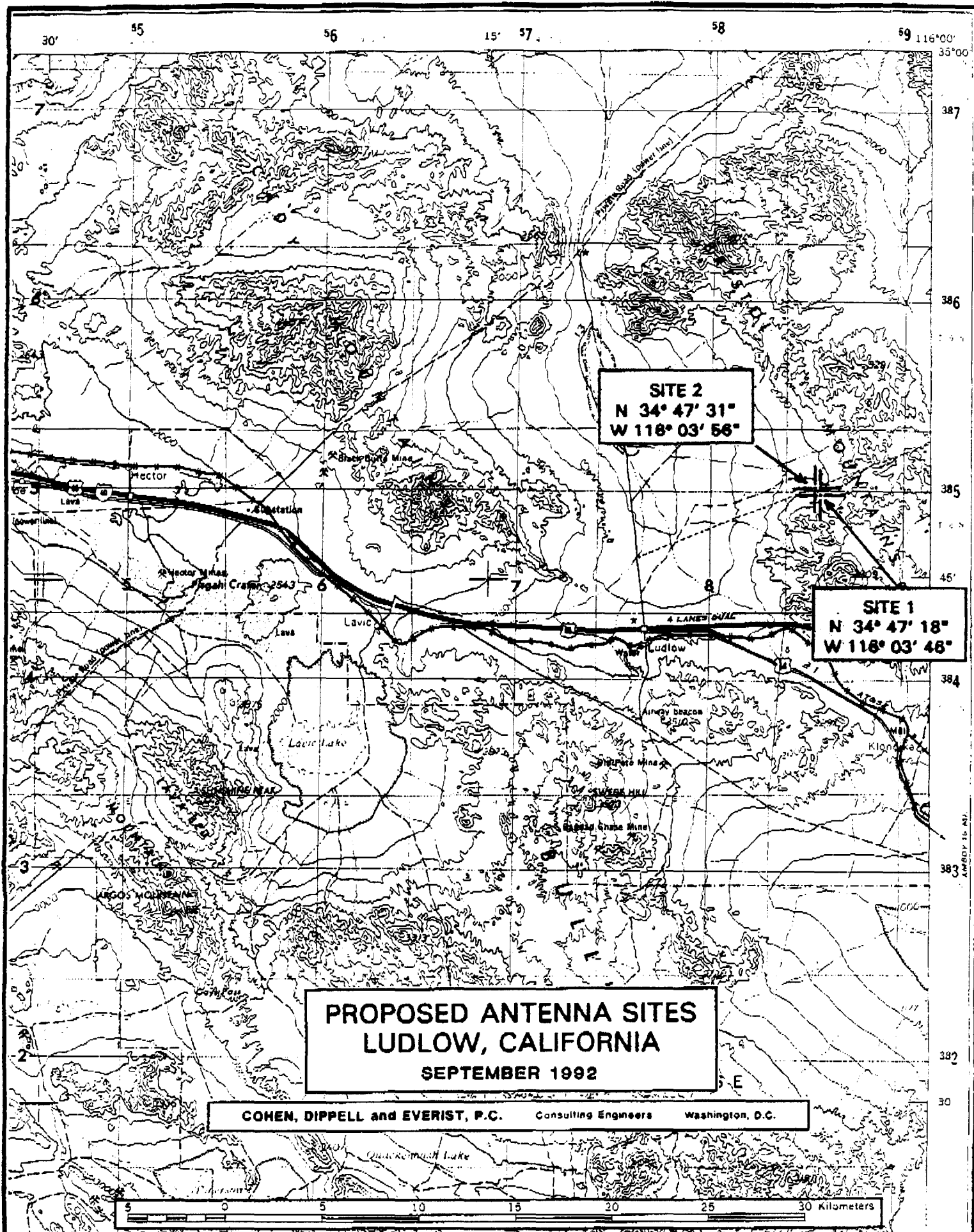
I have reviewed the attached map concerning a proposal to locate a radio station antenna in the Bristol Mountain area. Please be advised that neither of the two identified sites are available for construction of radio facilities. The Bureau of Land Management administers the land in this area, which is located in Wilderness Study Area #256. No construction of any kind is permitted in this area.

Sincerely,

Richard E. Fagan
Richard E. Fagan
Area Manager, Needles

enclosure

[Note: Original will be filed upon receipt.]



**ENGINEERING STATEMENT
RE COMMENTS TO PETITION FOR RULE MAKING
TO AMEND FM TABLE OF ALLOTMENTS (47 CFR 73.202)
RM-8022, LUDLOW, CALIFORNIA**

SEPTEMBER 1992

**COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

Sudhir K. Khanna, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is a Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.

S.K. Khanna,

Sudhir K. Khanna
District of Columbia
Professional Engineer
Registration No. 8057

Subscribed and sworn to before me this 4th day of September, 1992.

Carl J. Lyons
Notary Public

My Commission Expires: 2/28/93

This engineering statement has been prepared on behalf of KHWY, Inc., licensee of FM broadcast station KHYZ, Mountain Pass, California, and provides comments opposing a proposed rule making petition (RM-8022) to amend the FM Table of Allotments in Section 73.202 of the Commission's Rules.

The proposed rule making petition filed on behalf of Miracle Broadcasting requests the allotment of FM channel 261B1 to Ludlow, California. However, engineering studies conducted on the proposed channel 261B1 allotment indicate prohibitive overlap of contours with first adjacent channel station KOLA-FM, San Bernardino, California. Station KOLA-FM operates on Channel 260B with 29.5 kW ERP and 507 meters HAAT.

The attached exhibit (Figure 1) shows the predicted interfering contour (51 dBu) from station KOLA will overlap the protected contour (57 dBu) of the proposed 261B1 Ludlow allotment. Likewise, the predicted interfering contour (48 dBu) of the Channel 261B1 Ludlow allotment will overlap the protected contour (54 dBu) of KOLA resulting in predicted received interference to both channels, although the transmitter sites meet the minimum separation requirements specified for Class B to B1 channels. The contours were computed based on the maximum facilities of 25 kW and 100 meters for Channel 261B1 and the licensed facilities for KOLA.

Also shown on this exhibit (Figure 1) is the protected contour (54 dBu) of KHYZ (third adjacent channel to the proposed Channel 261B1 allotment) and the interfering contour (94 dBu) for the proposed allotment from the reference site. Although the

reference transmitter site for the proposed Channel 261B1 allotment meets the separation requirement of section 73.207 with respect to station KHYZ, however, due to the unavailability of the reference site, other sites may have the potential of causing interference to KHYZ.

There are two Class A channels available using a reference site of Ludlow center city (channels 243 and 277) which would not receive or cause predicted interference (see Tables I and II). There are numerous other Class A channels which may be available for use but require a transmitter site restriction located from approximately 1 to 11.5 km removed from Ludlow center city (channels 230,233,237,241,264,265,and 271).

In addition, channel 243 can be allotted to Ludlow as a class B1, not be subject to interference and could provide the required 70 dBu service to Ludlow. Table III attached is an allocation study that demonstrates Channel 243B1 meets the minimum separation requirements of Section 73.207 of the Commission's Rules. Table III shows the distance in kilometers to all pertinent co-channel adjacent-channel stations computed by the method prescribed by the FCC Rules using the reference geographic coordinates for the proposed Channel 243B1 allotment (North Latitude 34-41-25 and West Longitude 116-23-35) and the Commission's listed geographic coordinates for other stations and new proposals.

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
FM ALLOCATION SITUATION
OF A PROPOSED CHANNEL 243A ALLOTMENT
FOR LUDLOW, CALIFORNIA
SEPTEMBER 1992

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
				<u>Actual</u> km	<u>Required</u> km
243A	Proposed Allotment	Ludlow, CA	N 34°43'24" W 116°09'54"	--	--
240B1	KXXZ LIC	Barstow, CA	N 34°58'15" W 117°02'21"	84.5	48
241A	None within 100 km		--	--	31
241C	None within 130 km		--	--	95
242C	KKLZ LIC	Las Vegas, NV	N 36°00'29" W 115°00'20"	177.3	165
243B	KYXY LIC	San Diego, CA	N 32°50'17" W 117°14'56"	232	178
244A	KCAL-FM LIC	Redlands, CA	N 34°11'51" W 117°17'10"	118.4	72
244A	KBZT-FM LIC	La Quinta, CA	N 33°48'08" W 116°13'30"	102.3	72
244C	None within 185 km		--	--	165
245A	New	Lenwood, CA	N 34°51'20" W 117°02'57"	82.2	31
245C	None within 115 km		--	--	95
246C	None within 115 km		--	--	95
296C	None within 49 km		--	--	29
297C	None within 49 km		--	--	29

COHEN, DIPPELL AND EVERIST, P. C.

TABLE II
FM ALLOCATION SITUATION
OF A PROPOSED CHANNEL 277A ALLOTMENT
FOR LUDLOW, CALIFORNIA
SEPTEMBER 1992

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
				<u>Actual</u> km	<u>Required</u> km
277A	Proposed Allotment	Ludlow, CA	N 34°43'24" W 116°09'54"	--	--
274C	None within 115 km		--	--	95
275C	None within 115 km		--	--	95
276C	None within 185 km		--	--	165
276A	KEZN LIC	Palm Desert, CA	N 33°51'58" W 116°25'56"	98.2	72
277B	XHVG	Mexicali, BN	N 32°38'36" W 115°27'00"	240	240
277B	Allotment	Tijuana, BN	N 32°30'30" W 117°04'40"	259.9	240
278C	KEDG LIC	Las Vegas, NV	N 36°00'29" W 115°00'20"	177.3	165
279C	None within 115 km		--	--	95
280A	ADD	Essex, CA	N 34°44'12" W 115°14'48"	84.1	69
280C	None within 115 km		--	--	95
223C	None within 49 km		--	--	29
224C	None within 49 km		--	--	29

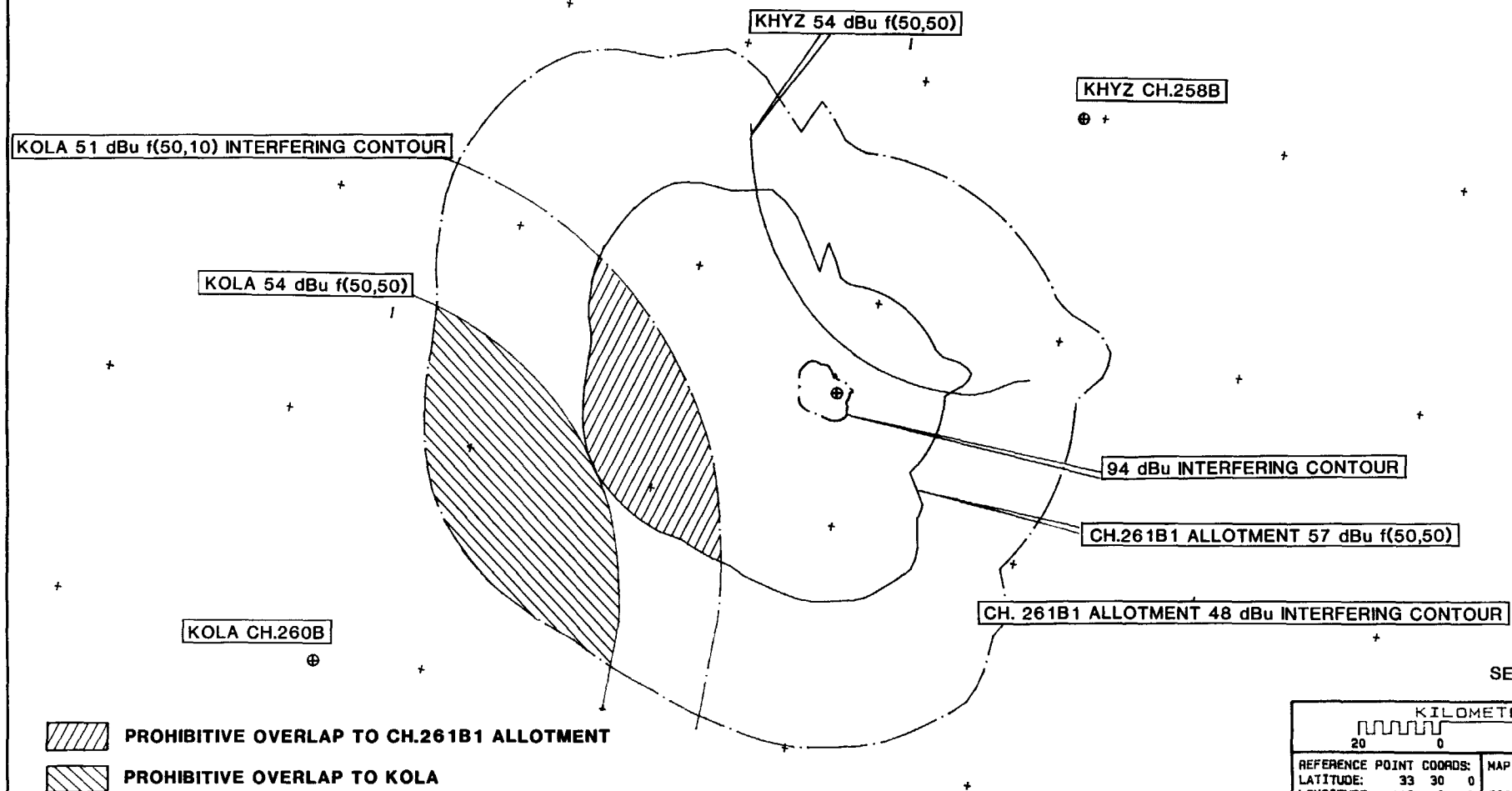
COHEN, DIPPELL AND EVERIST, P. C.

TABLE III
FM ALLOCATION SITUATION
OF A PROPOSED CHANNEL 243B1 ALLOTMENT
FOR LUDLOW, CALIFORNIA
SEPTEMBER 1992

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
				<u>Actual</u> km	<u>Required</u> km
243B1	Proposed Allotment	Ludlow, CA	N 34°41'25" W 116°23'35"	--	--
240B1	KXXZ LIC	Barstow, CA	N 34°58'15" W 117°02'21"	84.5	50
241A	None within 100 km		--	--	48
241C	None within 130 km		--	--	95
242C	KKLZ LIC	Las Vegas, NV	N 36°00'29" W 115°00'20"	193.1	193
243B	KYXY LIC	San Diego, CA	N 32°50'17" W 117°14'56"	220.2	211
244A	KCAL-FM LIC	Redlands, CA	N 34°24'51" W 117°17'10"	98.6	96
244A	KBZT-FM LIC	La Quinta, CA	N 33°48'08" W 116°13'30"	99.7	96
244C	None within 180 km		--	--	193
245A	New	Lenwood, CA	N 34°51'20" W 117°02'57"	62.8	48
245C	None within 130 km		--	--	105
246C	None within 130 km		--	--	105
296C	None within 49 km		--	--	31
297C	None within 49 km		--	--	31

COHEN, DIPPELL and EVERIST, P.C. Consulting Engineers Washington, D.C.

**FIGURE 1
ALLOCATION SITUATION
FOR THE CHANNEL 261B1 PROPOSED ALLOTMENT
AT LUDLOW, CALIFORNIA**



SEPTEMBER 1992

KILOMETERS			
20	0	20	40
REFERENCE POINT COORDS:		MAP PROJECTION-ALBERS	
LATITUDE: 33 30 0		TIC MARK INTERVAL: .5°	
LONGITUDE: 118 0 0			

CERTIFICATE OF SERVICE

I, Tania M. Brown, a Legal Secretary with the law firm of Hogan & Hartson, hereby do certify that on this 4th day of September, 1992, I caused to be placed in the United States mail, first class, postage prepaid, a copy of the foregoing "Comments" thereto addressed to the following:

Peter Gutmann, Esq.
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006



Tania M. Brown